



REINSURE THE PREEXISTING CONDITION UNFUNDED MANDATE

A small portion of the population accounts for a disproportionately high percentage of health care spending. When included in group insurance coverage, these individuals drive up costs for all enrollees. The Federal Government should support reinsurance for the costliest utilizers of health care to reduce premiums for the remaining population.

BACKGROUND

The Affordable Care Act (ACA) requires private health insurers to provide coverage to individuals regardless of health status, medical history, and preexisting conditions.¹ Under the ACA, insurers can adjust premiums based solely on certain ACA-specified factors (i.e., individual or family enrollment, geographic rating area, tobacco use, and age).

Democrats and Republicans have supported such policies despite polarizing disagreements over the ACA. Regardless of the future status of the ACA law, the federal government will likely continue to mandate coverage for preexisting conditions in a manner that fails to account for their comparably high health care spending.

According to the Peterson-Kaiser Health System Tracker, “5% of the population accounted for half of all health spending [in 2019].”² The dollar figures attached to the highest health care spenders are significant. “The 5% of people with the highest health spending had an average of \$61,000 in health expenditures annually; people with health spending in the top 1% have average spending of over \$130,000 per year.”³

Under the terms of the ACA, the federal government imposes a mandate on private companies to provide benefits to a population which might otherwise be denied coverage or exhaust lifetime policy limits. Because health insurers may not charge increased premiums for various health conditions under the law,⁴ those additional costs are spread across their respective enrollees in the form of higher premiums. In short, the preexisting condition coverage requirement and ban on lifetime policy limits are essentially unfunded government mandates.

POLICY SOLUTIONS

One option to end the ACA’s unfunded coverage mandates is to simply repeal the mandates outright. Alternatively, Congress should reinsure against risk of loss from the costliest enrollees to reduce insurance premiums for most Americans. If the federal government insists on mandating coverage, it should share a corresponding portion of increased premium costs due to preexisting conditions.

The Fair Care Act of 2019 contained a program known as the Invisible High Risk Pool Reinsurance (IHRPR) Program.⁵ An actuarial study of the IHRPR program found that a reinsurance program covering risk beyond \$10,000 of benefits per year would reduce “average premiums in the new risk pool in the individual marketplace” between 12 to 31 percent.⁶

The Foundation for Research on Equal Opportunity suggests the funds could be administered through: federal reinsurance program, block grants to states, or a combination of each “under which states could have the option to take the funds in a block grant form, or leave the reinsurance program to the federal government.”⁷ Congress should consider basing the reinsurance premium amount and risk retention for insurers on the relative year-over-year health care spending by the covered high-risk individual. Doing so would ensure that health insurers retain an incentive to create downward pressure on health care spending.

To ensure the reinsurance program doesn’t exceed Medicare payment rates, Congress must ensure that the negotiated reinsurance policy payment rate for items and services is equivalent to the Medicare reimbursement rate under Title XVIII of the Social Security Act. If the underlying health care policy covers items and services not covered by the Medicare program, the Secretary of the Department of Health and Human Services should determine a payment schedule.

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¹ Patient Protection and Affordable Care Act, Pub. L. No. 111-148.

² Jared Ortaliza, Matthew McGough, et al. “How Do Health Expenditures Vary Across the Population?” Kaiser Family Foundation. November 12, 2021 <https://www.healthsystemtracker.org/chart-collection/health-expenditures-vary-across-population/>

³ Id.

⁴ 45 C.F.R. § 144, 146, and 147 (2010).

⁵ H.R. 1332, 116th Cong. (2019).

⁶ The Federal Invisible High Risk Pool, Milliman, Inc. (2017), <https://thefga.org/wp-content/uploads/2017/04/The-Federal-Invisible-High-Risk-Pool.pdf>.

⁷ Avik Roy, Bringing Private Health Insurance Into the 21st Century, <https://freopp.org/bringing-private-health-insurance-into-the-21st-century-d1df138f1f0c> (last accessed February 10, 2019).